Before the
Federal Communications Commission

In the Matter of	)	
Rural health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Health Information Exchange of Montana	)	
Request for Additional Funding under the	)	
Rural Health Care Pilot Program	)	

Comments of the Montana Telecommunications Association

Submitted by
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Introduction

The Montana Telecommunications Association ("MTA")[1] opposes the request by the Health Information Exchange of Montana ("HIEM") for additional funding under the Rural Health Care Pilot Program. As MTA continually has commented in the past, the HIEM project provides a clear illustration of the negative aspects of the Rural Health Care Pilot Program as it has been implemented by the Federal Communications Commission ("Commission"). The lessons learned from observing the HIEM project corroborate the findings of the U.S. General Accounting Office ("GAO"), which concluded that the Rural Health Care Program suffers from the combined effects of the absence of needs assessment, lack of performance goals and ineffective performance measures.

From its inception, the HIEM project does not appear to have been subjected to the kind of due diligence scrutiny a normal business plan would have undergone. Without performing any serious needs assessment or significant market research, HIEM erroneously alleged that access in Northwestern Montana to broadband capability was "limited;" and therefore, without demonstrating any market, cost or price analysis, it requested *and received* $13 million to build a fiber network that is unnecessary, redundant, duplicative, and wasteful of increasingly scarce universal service resources. And now it requests $13 million

[1] MTA represents both member-owned cooperatives and shareholder-owned commercial rural local exchange carriers ("RLECs") serving business and residential consumers in Montana. MTA members have invested hundreds of millions of dollars in Montana's telecommunications infrastructure and continue to invest tens of millions each year in new facilities and services aimed primarily at rural Montana consumers. Collectively, Montana's RLECs have deployed over 9,000 miles of fiber optic infrastructure. They provide a state-of-the-art statewide emergency service E-911 network; and, through a consortium of RLEC members, operate a statewide middle-mile fiber backbone network, which includes nearly 200 videoconference facilities used for telemedicine, distance learning, judicial proceedings and a host of commercial purposes. MTA members provide access to broadband Internet service to over three-quarters, and in many cases nearly 100%, of their customers—while serving some of the least densely populated, hardest-to-reach, high-cost areas of the nation. Montana's RLECs employ over 1,000 Montanans who substantially invest their time and resources in the communities in which they live and work.

to do more of the same. As the American Telemedicine Association ("ATA") says in its comments referring to Rural Health Care Program-funded infrastructure proposals, such a policy is "ill-advised," to say the least.

Further funding HIEM not only would exacerbate deficiencies in the program that have been exposed by this project to date, but would establish a negative precedent with regard to other Pilot Program projects; would contradict GAO's admonition to develop appropriate goals and measurements before funding additional projects; and would be contrary to Congressional intent to return—not spend—de-obligated funds.

Construction of Universal Service-Supported Infrastructure May Threaten Private Investment

There is not a single health care facility member of the HIEM network that does not have access today to sufficient bandwidth, at affordable rates, upon request from at least one, and in many cases, more than one, telecom provider. Thus, to the extent HIEM proposes to build infrastructure when existing facilities already provide service, HIEM's network must be considered redundant and unnecessary. Any funding for such redundant infrastructure should be denied.

MTA does not believe it is good public policy to spend universal service money on duplication of existing network facilities. Nor does the Commission. In both its Rural Health Care Pilot Program Order,[2] and later in the National Broadband Plan,[3] the Commission encourages leveraging existing network assets to

[2] *In the Matter of Rural Health Care Support Mechanism*. WC Docket No. 02-60; FCC 06-144. Order. Adopted September 26, 2006. ¶16. "*We expect each applicant to present a strategy for aggregating the specific needs of health care providers, including providers that serve the rural areas, within a state or region, and leveraging existing technology to adopt the most efficient and cost effective means of connecting those providers*."

[3] Federal Communications Commission. "Connecting America: The National Broadband Plan." Rel.: March 16, 2010. Chapter 1, pp. 3-5. "Due in large part to private investment and market-driven innovation, broadband in America has improved considerably in the last decade…[T]he role of government is and should remain

accomplish the efficient and effective deployment of broadband telecommunications services and to "prevent wasteful allocation of limited universal service funds."[4]

Montana's broadband providers are ready to work with HIEM at any time. For example, in Kalispell, the core of the HIEM network, HIEM has had access to gigabit broadband services since HIEM's inception. In Missoula, where several HIEM partners are located, there are at least two, and often more, existing broadband network providers who could provision any service HIEM may desire in a matter of days. In Eureka, another HIEM partner location, the local telecom provider can provide 100 Mb service upon request, and in fact even notified HIEM of its desire to provide service, only to be rebuffed. Similarly, HIEM locations in Cutbank, Browning, St. Ignatius, Stevensville, Whitefish, Heart Butte, Polson, Pablo, Ronan, Conrad and Shelby all can obtain 100 Mb service today. In fact, as HIEM indicates, in some cases HIEM is partnering with existing broadband providers, *leveraging existing assets* "**at no cost to the Rural Health Care Pilot Program**"[5] to deliver broadband health care services to communities such as Cut Bank, Heart Butte, Browning, Conrad and Shelby. (emphasis added.)

It is precisely this kind of partnership, rather than building duplicative, wasteful and unnecessary infrastructure that MTA encourages, and commends HIEM for undertaking.[6]

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limited…Instead of choosing a specific path for broadband in America, this plan describes actions government should take to encourage more private innovation and investment.

[4] *In the Matter of Rural Health Care Support Mechanism*. WC Docket No. 02-60; FCC 07-198. Order. Adopted November 16, 2007. ¶54.

[5] Letter from Kipman Smith, Executive Director, HIEM, to Sharon Gillett, Chief, FCC Wireline Competition Bureau. December 29, 2010. P. 2.

[6] MTA wonders, however, if HIEM has discovered the value of partnership, why then it needs an additional $13 million.

On the other hand, by using Universal Service Rural Health Care Program funds to build additional infrastructure in already-served areas, HIEM not only wastes scarce universal service resources, but threatens to remove traffic from existing networks by selling excess capacity on its network, thereby discouraging further investment in vital broadband infrastructure.

MTA further points out that existing broadband network providers, including but not limited to MTA member companies, continually invest in the enhancement of their networks. If the Rural Health Care Pilot Program had been established years earlier, one could ask whether the existence of a fully subsidized network like HIEM would have discouraged or slowed the rate of private investment in rural broadband infrastructure in Northwestern Montana. In other words, funding infrastructure deployment is not a static, one-time-only phenomenon. It has long-term negative repercussions on future private broadband investment.

HIEM somehow argues that its network offers cost effective and affordable service. This could only be the case if HIEM disregards the funding sources for its network. Without accounting for its initial $13 million start up cost, HIEM can offer service practically for "free" to its clients and potential customers, while other providers actually need to account for real costs of building and maintaining their networks. As MTA has commented before, when HIEM builds redundant infrastructure and diverts traffic to its network, those hardest hit are stranded rural residential and small business consumers who lack the proximity to HIEM's facilities or who lack the size and scale to connect to it.

With increasing demand being placed on the Universal Service Fund and decreasing contributions into the Fund, MTA suggests there are better uses for universal service resources than building duplicative networks which threaten private investment in the public telecommunications infrastructure, increased prices and diminished access for rural residential and small business consumers.

Further Funding of Rural Health Care Projects Should Cease Until Sufficient Goals and Standards are Developed

GAO "recommends that the FCC Chairman assess rural health care providers' needs, consult with knowledgeable stakeholders, develop performance goals, and measures, and develop and execute sound performance evaluation plans" for the Rural health Care Program. These steps should be taken "before implementing any new programs or starting any new data collection efforts."[7]

In a February 15, 2011 letter (DA 11-262) to Scott Barash, Acting CEO of the Universal Service Administrative Company ("USAC"), Sharon Gillett, Chief of the Wireline Competition Bureau, directs USAC to "develop an evaluation plan for the Rural health Care Pilot Program" as recommended in GAO's November, 2010 report. Specifically, "GAO recommends that the Commission develop and execute a sound performance *evaluation plan for the current program*, and develop sound evaluation plans as part of the design of any new programs *before implementation*." (emphasis added.) The evaluation plan should include, among other criteria, "well-defined, clear, and measurable objectives [and] criteria or standards for determining program performance…"

It is clear to MTA that HIEM never established clear needs or performed a needs assessment. It never consulted with knowledgeable stakeholders, including for example, network providers who could have helped it develop a viable business plan. It never developed performance goals and measures. And it never produced a sound performance evaluation plan. HIEM claims its partners need 100 Mb service. It claims it needs to build a fiber network because access to capacity is limited. But it fails to demonstrate any of its claims. A quick check with any of the broadband providers of Northwest Montana renders these claims hollow.

[7] U.S. Government Accountability Office. "FCC's Performance Management Weaknesses Could Jeopardize Proposed reforms f the Rural Health Care Program. GAO-11-27. November 17, 2010. http://www.gao.gov/products/GAO-11-27. Summary.

GAO recommends that the Commission not commit further funds to the Rural Health Care Program or the Pilot Program before implementing a sound performance evaluation plan. Granting HIEM's request for additional funding would be contrary to GAO's recommendation. MTA recommends denial of HIEM's request.

Funding HIEM's Request Would Establish a Conflict with Other Pilot Program Projects

Funding HIEM's request effectively would put the cart-before-the-horse, contradicting GAO's recommendations to develop standards *before* proceeding further with program implementation. By granting HIEM's request, the Commission likely will open the door for other Pilot Program projects to file "me too" requests for "relinquished" funds.

On the other hand, if the Commission grants HIEM's request, but not others', on what basis can it justify such discriminatory preference, especially in the absence of clearly established performance evaluation measurements?

De-obligated Funds Should Be Returned to the Universal Service Fund

HIEM's request for additional funding states that "it appears a significant amount of the $417 million that the Commission set aside for the RHCPP has been relinquished by other projects and may be ***lost*** unless WCB designates successor projects."[8] HIEM notes that the "*Pilot Program Selection* Order of 2007" provides the policy of designating successor projects. As with the Commission's "excess capacity" rule, the Commission established policy with little public notice or comment.

[8] Letter from Kipman Smith, Executive Director, HIEM. Letter to Sharon Gillett, Chief, Wireline Competition Bureau. December 29, 2010. *Op cit.* emphasis added.)

MTA suggests funds that are "relinquished" are not "lost." Rather, they are found. And such funds should be returned to the Universal Service Fund, where demands on the Fund are increasing and revenues into the Fund are decreasing.

Returning such unspent resources would be consistent with recently articulated Congressional intent, too. In Congressional oversight hearings on February 10, 2011, House Energy and Commerce Committee Ranking Member, Henry Waxman, among others, noted that any de-obligated broadband stimulus funds "should be returned to the Treasury." While Rural Health Care Program funds are distinct from broadband stimulus funds, the policy remains the same: unspent funds should be returned to their origin.

Conclusion

Nearly one hundred years ago, British politician Denis Healey is quoted as saying, "when you are in a hole, stop digging." HIEM would be well advised to heed his advice. Rather than seeking to spend more money, HIEM should seek to spend less money more efficiently by leveraging the considerable broadband assets currently available by a broad spectrum of providers for the benefit HIEM's partners and the business, cultural, emergency service, health care, educational and residential consumers of Montana. The Commission should deny HIEM's request.

Respectfully Submitted,

/s/

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